

REMARKS

Reconsideration of this application, in view of the foregoing amendments and the following remarks, is respectfully requested.

Response to the Examiner's Comments

In response to Applicants' assertion regarding DSL modems, the Examiner has stated that

“Applicant argues that McHale does not describe structure of the DSL modem used in the modem pool and hence McHale does not teach claim 1. This is not persuasive since McHale describes the structure as stated in the prior action. Applicant argues that McHale does not teach DSL modem. This is not persuasive since McHale teaches DSL modems in for example col. 2 line 7 with “XDSL modem”. Col. 1 lines 42 in McHale teaches “digital subscriber line (DSL)”. (Emphasis Added)

Applicants respectfully point to the Examiner that Applicants did not argue that McHale does not teach DSL Modem instead Applicants stated that “McHale does not even describe the structure of the DSL modem used in the modem pool thus it is not clear what comparable elements are used in the DSL modem pool as compared to the DSL modem recited in claim 1.” (Page 7 of the previous response). Claim 1 recites a DSL modem and its internal components, where McHale describes a communication server and interface. Even in sections cited by the Examiner, col. 2, line 7, McHale only references XDSL modems as being part of the modem pool. Applicants respectfully remind the Examiner that the reference must teach each and every element of the claim. When McHale does not even describe the structure of an XDSL modem, elements of claim 1 cannot be compared with the communication server of McHale out of context. “The claimed invention as a whole must be considered.” See MPEP §2141.02.

Further as to detecting the DSL service, the Examiner has stated that “... McHale would want to verify that DSL service exists to customers that have requested DSL service rather than getting a call from a customer complaining that they still do not have DSL service.” (Emphasis added).

Applicants respectfully point to the Examiner that a careful reading of McHale reveals that the scenario the Examiner has described does not even exist in the context of what McHale describes his invention. For example, according to the Examiner, McHale would first verify that DSL service exists for customers that have requested DSL service; however, to the contrary, McHale states that only those customers who request data services will have a data line and those who desire POTS only service will not have data line. According to McHale,

“... not all subscribers 12 in communication system 10 desire access to data service provided by the communication server 58. Splitter 50 need not provide a separate data line 54 for those subscribers 12 that only desire phone service from telephone switch 56. As more subscribers 12 desire access to data service, the XDSL communication capabilities of splitter 50 and communication server 58 may be supplemented in a modular and cost effective manner to meet the demand.” (Col. 6, lines 30-38, emphasis added).

Thus, only those subscribers who have subscribed to data service will be connected to the communication server via the splitter 50 (*see* figure 1). Therefore, there is no need to verify whether the DSL service exists for those customers because their connection to the data line via splitter 50 verifies the data service subscription and the communication server is connected to only those customers who have the data service. In fact, McHale’s description of “updating the system in a modular and cost effective manner” teaches away from verification of DSL service every time a request for data service is detected because then there is no need to have a modular upgrade of communication system. Accordingly, the scenario that the Examiner has described will not exist for McHale’s communication server.

Furthermore as to the combination of McHale and Liu, the Examiner has stated that,

“... McHale detects request for DSL service and Liu detects DSL service. These are complementary in not only that they are separating voice and data but also in that after McHale detects a request for DSL service, it would be efficient for McHale to make sure that DSL service that was requested by a customer now exists rather than getting a complaint call from the customer saying that they requested DSL service and they do not have it and McHale not being able to know whether the DSL service is now provided.”(Emphasis added).

As explained above, McHale already knows that only those customers are connected to the communication server via the splitter and data lines who have requested the data service (see col. 6, lines 30-38 and above explanation). Therefore, there is no need for McHale to detect any service on the data line.

Thus, the combination of cited references do not teach, describe, or suggest each and every element of independent claims. Further, neither of the cited references provide motivation to combine their references. Accordingly, independent claims and those depend therefrom are patentably distinguishable from the combination of cited references.

Claim Rejections - 35 USC §103

Claims 1, 8, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHale USPN 6014431 in view of Liu USPN 6349096. See prior action for details. Applicants respectfully traverse these rejections.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHale USPN 6014431 in view of Liu USPN 6349096 as applied to claim 1 above, and further in view of Erikson USPN 6826174. See prior action for details. Applicants respectfully traverse these rejections.

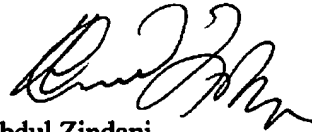
Claims 10, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHale USPN 6014431 in view of Liu USPN 6349096 as applied to claim 1 above, and further in view of Bingel USPN 6744883. See prior action for details. Applicants respectfully traverse these rejections.

Applicants respectfully point to the Examiner that in light of explanation provided above and in the previous response, claims 1-21 are patentably distinguishable from the combination of cited references.

Further, Applicants respectfully point to the Examiner that the MPEP clearly describes basic requirements for establishing a *prima facie* case of obviousness. According to the MPEP,

the "fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness." See MPEP §2143.01. Furthermore, as explained above, the combination of Liu and McHale does not teach each and every element of claims 1-21. Accordingly, Applicants believe that this application and the claims herein to be in a condition for allowance. Should the Examiner have further inquiry concerning these matters, please contact the below named attorney for Applicant.

Respectfully submitted,



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